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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
AT SAN FRANCISCO**

11 AMERICAN FEDERATION OF  
GOVERNMENT EMPLOYEES, AFL-CIO,  
12 et al.,

13 || Plaintiffs.

14 || v.

15 UNITED STATES OFFICE OF  
PERSONNEL MANAGEMENT, et al.,

### Defendants.

NO. 3:25-cv-01780-WHA

DECLARATION OF  
ALEXANDRA AVILA

1       I, Alexandra Avila, declare as follows:

2       1. I am over the age of 18, competent to testify as to the matters herein, and make  
3 this declaration based on my personal knowledge.

4       2. I am a resident of Port Angeles, Washington.

5       3. Before being terminated in February 2025, I was an employee of NOAA in the  
6 Olympic Coast National Marine Sanctuary. I was hired into my most recent position in  
7 September 2024 as a Marine Scientist.

8       4. I received my Ph.D. in Fisheries from Oregon State University. My work  
9 experience includes positions with the National Park Service, US Forest Service, and the US Fish  
10 and Wildlife Service. I have worked in the private sector on environmental consulting. I have  
11 also taught at the university level.

12       5. Prior to my termination, I was involved in an ocean mooring data collection  
13 project. While NOAA has been monitoring ocean conditions for nearly 25 years, their existing  
14 approach relied on retrieving buoys every few weeks to collect the oceanographic data. This  
15 long-term data set is important for creating climatology models developed by researchers at  
16 Oregon State University and the University of Washington. Furthermore, our team was working  
17 with researchers at University of Washington and Northwest Association of Networked Ocean  
18 Observing Systems to implement live mooring buoys scheduled for deployment later in 2025,  
19 which would mark a significant advancement in oceanographic research. These innovative buoys  
20 would provide insights into current ocean conditions. Unlike our current buoy system that allows  
21 us to see ocean conditions retrospectively, our live monitoring system would offer an immediate  
22 window into marine environments. The potential impact was particularly significant for regional

1 industries, especially fishing. For instance, the real-time data could prove crucial for tribal crab  
2 fishers. By tracking oxygen levels in the ocean, fishers could receive early warnings about  
3 potentially dangerous conditions like hypoxia, allowing them to retrieve crab pots before oxygen  
4 depletion threatens to kill their catch. This capability represents a critical intersection of scientific  
5 research and practical maritime industry needs.

6       6. I also work on 304(d) consultations with the Makah Tribe. Section 304(d) of the  
7 National Marine Sanctuaries Act (NMSA) provides a framework for resolving conflicts between  
8 sanctuary management and uses of sanctuary resources permitted under other laws. This section  
9 seeks to balance federal responsibilities to manage marine sanctuaries while recognizing valid  
10 subsistence or cultural practices established by treaties. These consultations permit the Makah  
11 Tribe to obtain clearance from the National Marine Fisheries Service (NMFS) to fish and hunt  
12 in the Tribe's usual accustomed grounds, a right the Tribe holds under treaties with the federal  
13 government (Treaty of Neah Bay [1855]). My research examined ways in which the Tribe could  
14 have the least environmental impact on other species such as seals and birds in the area of their  
15 hunting and fishing activities, a consideration that may be relevant to compliance with the  
16 Endangered Species Act, National Marine Sanctuaries Act, Marine Mammal Protection Act and  
17 other relevant legislation.

18       7. In my work for NOAA/NMFS on 304(d) consultations, I partnered with the  
19 Washington Department of Fish and Wildlife and US Fish and Wildlife Service. Our joint work  
20 involved compiling data on the potential impacts of whaling activities on seabirds, marine  
21 mammals, and the haul out and pupping grounds of pinnipeds (including seals), and making  
22 recommendations to mitigate impacts of tribal hunting and fishing on those species. Requests to  
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1 NMFS for 304(d) consultations must receive a response within 45 days. Due to my termination,  
 2 NMFS will respond to these requests with incomplete information on impacted birds, pinnipeds,  
 3 and other mammals.

4       8. On February 27, 2025, I received an email notifying me that I was terminated  
 5 from NOAA. The notice stated, “OPM has advised that ‘[p]robationary periods are an essential  
 6 tool for agencies to assess employee performance and manage staffing levels.’ . . . In light of that  
 7 guidance, the Agency finds that you are not fit for continued employment because your ability,  
 8 knowledge and/or skills do not fit the Agency’s current needs.” A true and correct copy of this  
 9 termination notice is attached as **Exhibit A** to this declaration.

10      9. Prior to this notice, I had no notice of any issues with my performance. On the  
 11 contrary, only nine days before my termination, my supervisor Kevin Grant, Olympic Coast  
 12 National Marine Sanctuary’s superintendent, signed a performance review on February 18, 2025,  
 13 stating that “Alex is a highly functioning and valuable member of the OCNMS team and her first  
 14 4 months at OCNMS have been a resounding success!” A true and correct copy of my  
 15 February 18, 2025 performance review is attached as **Exhibit B** to this declaration.

16      10. Further, NOAA’s Office of National Marine Sanctuaries (ONMS) provided a  
 17 \$180,000 scholarship to me (the Dr. Nancy Foster Scholarship), to complete my Ph.D. work at  
 18 Olympic Coast National Marine Sanctuaries. That Ph.D. work was completed in January 2023,  
 19 after which I completed two post-doctorate fellowships through Oregon Sea Grant, also a part of  
 20 NOAA. The second of these, the Coastal Resilience and Adaptation Fellowship, ended in  
 21 September 2024, only five months before I was fired from NOAA, supposedly because my  
 22 “knowledge and/or skills [did] not fit the Agency’s current needs.”

1 I declare under penalty of perjury under the laws of the State of California and the  
2 United States of America that the foregoing is true and correct.

3 DATED and SIGNED this 26th day of March 2025, at Port Angeles, Washington.

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6 ALEXANDRA AVILA  
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# Exhibit A

----- Forwarded message -----

From: <[trusted.staff.sender@noaa.gov](mailto:trusted.staff.sender@noaa.gov)>  
Date: Thu, Feb 27, 2025 at 12:36 PM  
Subject: Notification of Termination During Trial Period  
To: <[alexandra.avila@noaa.gov](mailto:alexandra.avila@noaa.gov)>

February 27, 2025

MEMORANDUM FOR AVILA, ALEXANDRA M, Marine Scientist, NOS  
FROM: VADM Nancy Hann  
Deputy Under Secretary for Operations  
SUBJECT: Notification of Termination During Trial Period  
REFERENCES: 5 U.S.C. § 3321(a)  
DAO 202-315

This is to provide notification that I am terminating you from the position of and federal service consistent with the above references.

On September 23, 2024, the agency appointed you to the position of Marine Scientist. As documented on your appointment Standard Form 50 (SF-50), your appointment is subject to the completion of a probationary/trial period. The agency also informed you of this requirement in the job opportunity announcement for the position.

Guidance from the Office of Personnel Management (“OPM”) states, “An appointment is not final until the probationary period is over,” and the probationary period is part of “the hiring process for employees.” (1) “A probationer is still an applicant for a finalized appointment to a particular position as well as to the Federal service” (2) “Until the probationary period has been completed,” a probationer has “the burden to demonstrate why it is in the public interest for the Government to finalize an appointment to the civil service for this particular individual.” (3)

OPM has advised that “[p]robationary periods are an essential tool for agencies to assess employee performance and manage staffing levels.” (4) In light of that guidance, the Agency finds that you are not fit for continued employment because your ability, knowledge and/or skills do not fit the Agency’s current needs.

For these reasons, I am terminating you from the position of Marine Scientist with the agency and the federal civil service effective February 27, 2025 at 5 p.m. EST.

If you believe that your termination is the result of discrimination, you have the right to file a complaint pursuant to 29 C.F.R. Part 1614. Any allegation of discrimination based on race, color, religion, sex, national origin, physical or mental disability, and/or age, must be brought to

the attention of an Agency Equal Employment Opportunity (EEO) Counselor within forty-five (45) days of the effective date of this action. <https://www.noaa.gov/civil-rights/eeo-counseling-complaints>

If you elect to seek corrective action by the Office of Special Counsel's (OSC) Complaints Examining Unit, your appeal will be limited to a determination as to whether the Agency took one or more covered personnel actions against you in retaliation for making one or more protected whistleblowing disclosures, which constitutes a prohibited personnel practice in accordance with 5 U.S.C. § 2302(b). If OSC dismisses your claim, you may file an individual right of action appeal to the MSPB, but the MSPB will only adjudicate whether you proved that your protected disclosure was a contributing factor in the effected action. For more information, you may visit the OSC's website at:

<https://osc.gov/pages/file-complaint.aspx>

If you have any questions regarding this notice, please contact Octavia Saine, Acting Director of the NOAA Office of Human Capital Services, at [octavia.saine@noaa.gov](mailto:octavia.saine@noaa.gov).

VADM Nancy Hann  
Deputy Under Secretary for Operations

- (1) OPM, [Practical Tips for Supervisors of Probationers](#).
- (2) See [U.S. Merit Systems Protection Board Report to the President and Congress, The Probationary Period: A Critical Assessment Opportunity](#) (August 2005)
- (3) Id.
- (4) OPM, [Guidance on Probationary Periods, Administrative Leave and Details](#)

# Exhibit B

## SECTION 2 - PROGRESS REVIEW

Employee's Name	Rating Period		
<b>ITEM 5. Mid-Cycle/Progress Review</b> (Check appropriate box)			
<input type="checkbox"/> 1. Review indicates performance is <b>Eligible</b> . <input type="checkbox"/> 2. Review indicates performance is <b>Eligible</b> ; however, there are performance deficiencies, as stated below. <input type="checkbox"/> 3. Review indicates performance is <b>deficient</b> and a performance improvement plan is needed. Deficiencies are stated below. ( <i>If this block is checked, supervisor must contact the servicing HR office.</i> )			
<b>Key Achievements, Strengths:</b> Be specific and relate these to performance elements. List areas where work was done well and identify the strengths exhibited by the employee during the rating period.			
<b>Deficiencies, Areas of Concern:</b> (Must be filled in if box 2 or box 3 above is checked) Be specific and relate these to individual performance elements. Note deficiencies or areas where performance has declined during the rating period.			
<b>Suggestions/Strategies for Improvement:</b> List areas in which the employee might enhance performance. Comments can also identify suggestions for career growth and development.			
	Employee's Initials	Date	Rating Official's Initials
Mid-Cycle Progress Review			
Progress Review			<i>Knight</i>
Progress Review			